

(2) Require any savings association not in compliance with capital standards to comply with a capital directive issued by the Director which may include the restrictions contained in paragraph (e) of this section and any other restrictions the Director determines appropriate.

(c) A savings association that wishes to obtain an exemption from the sanctions provided in paragraph (b)(2) of this section must file a request for exemption with the Regional Director. Such request must include a capital plan that satisfies the requirements of paragraph (a)(2) of this section.

(d) The Director may permit any savings association that is subject to paragraph (b) of this section to increase its assets in an amount not exceeding the amount of net interest credited to the savings association's deposit liabilities, if:

(1) The savings association obtains the Director's prior approval;

(2) Any increase in assets is accompanied by an increase in tangible capital in an amount not less than 3% of the increase in assets;

(3) Any increase in assets is accompanied by an increase in capital not less in percentage amount than required under the risk-based capital standards then applicable;

(4) Any increase in assets is invested in low-risk assets; and

(5) The savings association's ratio of core capital to total assets is not less than the ratio existing on January 1, 1991.

(e) If a savings association fails to meet any of the regulatory capital requirements set forth in § 567.2 of this part, the Director may, through enforcement proceedings or otherwise, require such savings association to take one or more of the following corrective actions:

(1) Increase the amount of its regulatory capital to a specified level or levels;

(2) Convene a meeting or meetings with the Office's supervision staff for the purpose of accomplishing the objectives of this section;

(3) Reduce the rate of earnings that may be paid on savings accounts;

(4) Limit the receipt of deposits to those made to existing accounts;

(5) Cease or limit the issuance of new accounts of any or all classes or categories, except in exchange for existing accounts;

(6) Cease or limit lending or the making of a particular type or category of loan;

(7) Cease or limit the purchase of loans or the making of specified other investments;

(8) Limit operational expenditures to specified levels;

(9) Increase liquid assets and maintain such increased liquidity at specified levels; or

(10) Take such other action or actions as the Director may deem necessary or appropriate for the safety and soundness of the savings association, or depositors or investors in the savings association.

(f) The Director shall treat as an unsafe and unsound practice any material failure by a savings association to comply with any plan, regulation, written agreement undertaken under this section or order or directive issued to comply with the requirements of this part.

[54 FR 49649, Nov. 30, 1989, as amended at 57 FR 33441, July 29, 1992; 60 FR 66720, Dec. 26, 1995]

§ 567.11 Reservation of authority.

(a) *Transactions for purposes of evasion.* The Director or the Regional Director for the region in which a savings association is located may disregard any transaction entered into primarily for the purpose of reducing the minimum required amount of regulatory capital or otherwise evading the requirements of this part.

(b) *Average versus period-end figures.* The Office reserves the right to require a savings association to compute its capital ratios on the basis of average, rather than period-end, assets when the Office determines appropriate to carry out the purposes of this part.

(c) *Reservation of authority.* Notwithstanding the definitions of core and supplementary capital in § 567.5 of this part, OTS may find that a particular type of purchased intangible asset or capital instrument constitutes or may constitute core or supplementary capital, and may permit one or more savings associations to include all or a

portion of such intangible asset or funds obtained through such capital instrument as core or supplementary capital, permanently or on a temporary basis, for the purposes of compliance with this part or for any other purposes. Similarly, the Office may find that a particular asset or core or supplementary capital component has characteristics or terms that diminish its contribution to a savings association's ability to absorb losses, and the Office may require the discounting or deduction of such asset or component from the computation of core, supplementary, or total capital.

[54 FR 49649, Nov. 30, 1989, as amended at 57 FR 33441, July 29, 1992]

§ 567.12 Qualifying intangible assets and mortgage servicing rights.

(a) *Scope.* This section prescribes the maximum amount of qualifying intangible assets, as defined in § 567.1 of this part, and mortgage servicing rights that savings associations may include in calculating tangible and core capital.

(b) *Definition.* *Qualifying intangible assets and mortgage servicing rights* means purchased credit card relationships and mortgage servicing rights (both originated and purchased). Mortgage servicing rights (both originated and purchased) may be included (that is, not deducted) in computing core and tangible capital. Purchased credit card relationships may be included in computing core capital, but must be deducted in computing tangible capital. These qualifying intangible assets and mortgage servicing rights may be included in capital only in accordance with the limitations and restrictions set forth in this section. Intangible assets, as defined in § 567.1 of this part, other than purchased credit card relationships and core deposit intangibles grandfathered by paragraph (g)(3) of this section, must be deducted in computing tangible and core capital.

(c) *Market valuations.* The OTS reserves the authority to require any savings association to perform an independent market valuation of qualifying intangible assets and mortgage servicing rights on a case-by-case basis or through the issuance of policy guidance. An independent market valuation,

if required, shall be conducted in accordance with any policy guidance issued by the OTS. A required valuation shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or attrition rates. The valuation shall determine the current fair market value of the qualifying intangible assets and mortgage servicing rights by applying an appropriate market discount rate to the net cash flows expected to be generated from the qualifying intangible assets and mortgage servicing rights. This independent market valuation may be conducted by an independent valuation expert evaluating the reasonableness of the internal calculations and assumptions used by the association in conducting its internal analysis. The association shall calculate an estimated fair market value for the qualifying intangible assets and mortgage servicing rights at least quarterly regardless of whether an independent valuation expert is required to perform an independent market valuation.

(d) *Value limitation.* For purposes of calculating core capital under this part (but not for financial statement purposes), qualifying intangible assets and mortgage servicing rights must be valued at the lesser of:

(1) 90 percent of their fair market value determined in accordance with paragraph (c) of this section; or

(2) 100 percent of their remaining unamortized book value determined in accordance with the instructions for the Thrift Financial Report.

(e) *Core capital limitation.*—(1) *Aggregate limit.* The maximum aggregate amount of qualifying intangible assets and mortgage servicing rights that may be included in core capital shall be limited to the *lesser* of:

(i) 50 percent of the amount of core capital computed before the deduction of any disallowed qualifying intangible assets or mortgage servicing rights; or

(ii) The amount of qualifying intangible assets and mortgage servicing rights determined in accordance with paragraph (d) of this section.

(2) *Reduction by deferred tax liability.* Associations may elect to reduce the